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FILE

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Policies and Rules Pertaining	)	RM-8012
to the Equal Access Obligations	)	
of Cellular Licenses	)	

OPPOSITION OF
MCCAW CELLULAR COMMUNICATIONS, INC.

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OPPOSITION OF MCCAW CELLULAR COMMUNICATIONS, INC.

McCaw Cellular Communications, Inc., by its attorneys, respectfully submits its Opposition to MCI's above-captioned Petition for Rulemaking.[1] MCI asks the Commission to develop uniform, nationwide cellular equal access policies. As discussed below, however, cellular equal access would be directly contrary to the public interest. Consequently, MCI's Petition should be dismissed.

I. INTRODUCTION AND SUMMARY

MCI seeks to impose a wholesale regulatory regime of burdensome access requirements on the competitive and still developing cellular industry. Underlying MCI's cursory Petition is the erroneous assumption that cellular is just another local exchange service, which should be subject to traditional local exchange obligations. MCI also asserts, without support, that cellular equal access would benefit consumers by reducing rates and expanding their choice of

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[1] Public Notice, "MCI Files Petition for Rulemaking to Require That All Cellular Licensees Interconnect With Interexchange Carriers Via Uniform, Nationwide, Cellular Equal Access Policies and Procedures," DA 92-745, released June 10, 1992.

interexchange carriers. As summarized below and discussed herein, however, MCI's assumptions and assertions cannot withstand scrutiny.

As an initial matter, from the authorization of cellular service eleven years ago, the Commission has recognized that cellular is distinct from traditional local exchange service. It has allowed cellular carriers to develop technology, configure systems, and integrate services to meet the needs of customers, without regard to unwarranted regulatory strictures or traditional geographic boundaries. The Commission's forward-looking approach has been well-rewarded. Unfettered by inappropriate technical regulation, the cellular industry today is characterized by declining prices, innovative technology, and beneficial service packages that meet the unique requirements of mobile users for local, regional, and nationwide wireless communications services.

For example, McCaw has transcended traditional landline local exchange functions by implementing its North American Cellular Network ("NACN"), which provides nationwide seamless service to users in any participating system. NACN is a major step in the evolution of cellular as a true mobile service, unconstrained by inflexible notions of "local" and "long distance" communications. Through NACN, subscribers receive automatic roaming privileges and the same feature set and dialing plan they enjoy in their home system. McCaw and other carriers also have integrated contiguous systems into

regional service "clusters." These clusters offer highly efficient, transparent service over a wide geographic area that corresponds to customer demand for mobile services, not LATA or state boundaries. Thus, MCI has ignored critical distinctions between cellular and local exchange carriers that highlight the inappropriateness of a cellular equal access requirement.

Second, there is no legal precedent for extending equal access to the cellular industry. The sole previously articulated justification for imposing such obligations on any entity is that the entity enjoyed monopoly control of an access bottleneck. Cellular carriers have no such control.[2] There are two licensees in each market, which compete vigorously in terms of price, service quality, and ancillary capabilities. Moreover, the Commission has allowed enhanced SMR systems ("ESMRs") to provide services that are functionally equivalent to cellular. It also has proposed to authorize at least three new personal communications service ("PCS") providers in each market "as a way of introducing additional competition to current mobile radio services" and

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[2] Of course, the affiliates of BOC cellular carriers do enjoy monopoly bottleneck control of the landline local exchange. Accordingly, absent the imposition of pro-competitive safeguards, restrictions on those affiliates' ability to provide interLATA wireless services are necessary to ensure that the BOCs will not misuse their market power to suppress wireless competition. See Comments of McCaw Cellular Communications, Inc., C.A. Docket No. 82-0192, filed April 27, 1992.

"ensure a wide and rich range of PCS services ...."[3] Given these efforts to expand mobile services competition even further, there certainly will be no wireless-controlled bottlenecks in the future.

Third, MCI does not support its claim that imposing equal access on cellular carriers would yield tangible consumer benefits, and it could not do so in any event. As far as McCaw is aware, no cellular carriers impose surcharges on subscribers for the valuable capability of accessing long distance networks. Rather, they provide interstate calling capabilities at rates that are comparable to or below traditional IXC offerings.

Cellular equal access, if anything, could result in higher costs to subscribers for several reasons. Many cellular carriers offer pricing plans that provide service at a set rate over a greatly expanded calling area within a system cluster. If service providers were forced to disaggregate "long distance" calls within their wide area plans, consumers would end up paying additional IXC charges as well as air time, resulting in higher overall charges. Furthermore, cellular equal access would effectively preclude cellular carriers from sharing with their customers volume discounts obtained from IXCs, because each individual

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[3] Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, FCC 92-333, released Aug. 14, 1992, at ¶¶ 26, 34.

subscriber would take service directly from an IXC at standard long distance rates. And of course, cellular carriers would need to recover the costs of converting to equal access, filing tariffs for the first time, and prosecuting the inevitable waiver and declaratory ruling requests to define the scope of the equal access obligation. In sum, cellular equal access would merely shift revenues from cellular carriers to IXCs, and at worst, would increase costs for the cellular industry and its subscribers.[4]

Finally, superimposing equal access requirements on the cellular industry would stunt its development and impede competition in the mobile communications marketplace. In response to consumer demand, cellular carriers have invested substantial sums to develop systems capable of providing seamless service over wide geographic areas. Equal access would negate these investments and create powerful disincentives to further system improvements. It would also place incongruent burdens on cellular carriers and hamper their ability to compete against other wireless service providers to meet the end-to-end communications needs of mobile users.

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[4] Similarly, presubscription would yield no appreciable consumer benefits. Subscribers already may access an alternative IXC by using a calling card or dialing an 800 or 950 number.

II. FUNDAMENTAL DISTINCTIONS BETWEEN CELLULAR SERVICE AND TRADITIONAL LOCAL EXCHANGE SERVICE PRECLUDE THE EXTENSION OF EQUAL ACCESS REQUIREMENTS TO THE CELLULAR INDUSTRY.

Equal access requirements historically have been imposed only on landline local exchange carriers, which enjoy monopoly control of an access bottleneck.[5] As discussed herein, the extension of such obligations to the cellular industry would be unprecedented. Cellular service is not now and must not in the future be limited to simple local exchange functions. Moreover, unlike the landline local exchange industry, the cellular industry is competitive, and cellular carriers in no sense control an access bottleneck.

A. Cellular Is a Non-Geographic Service Which Has Evolved To Meet the Unique Needs of Mobile Users.

The Commission has recognized from the initial authorization of cellular service that the cellular industry should not be limited to traditional local exchange functions. For example, in the 1981 Cellular Report and Order, the Commission emphasized its intent "to serve the public interest by implementing a nationwide high-capacity

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[5] The BOCs' bottleneck control of the local exchange was the underlying rationale for the MFJ's equal access requirements, see United States v. Western Elec. Co., 552 F. Supp. 131 (D.D.C. 1982), and the independent telephone companies' local exchange bottleneck gave rise to the Commission's equal access requirements. See MTS/WATS Market Structure, 100 F.C.C.2d 860 (1985).

mobile communications service"[6] and recognized that "cellular systems can provide both intrastate and interstate communications."[7] In subsequent decisions, the Commission has endeavored to accommodate the unique geographic requirements of mobile users. Thus, in adopting rules for licensing rural cellular systems, the Commission declined to restrict transfers of RSA authorizations prior to operation, finding that "the adoption of such a policy would unnecessarily limit the ability of MSA licensees and RSA grantees to construct regional cellular systems ...."[8]

These decisions reflect the Commission's understanding that, unlike landline local exchange service, cellular service is inherently non-geographic.[9] Mobile communications users need and expect to receive the same level of service, with the same features, whether they are in their home system, an adjacent city or state, or a system across the country. This need makes traditional notions of "local" and "long distance" of dubious value when applied to the cellular marketplace.

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[6] Cellular Communications Systems, 86 F.C.C. 2d 469, 502 (1981).

[7] Id. at 504 n.74.

[8] Amendment of the Commission's Rules for Rural Cellular Service, 4 FCC Rcd 2440, 2444 (1988).

[9] The Commission recognized from the initial authorization of cellular service that cellular should not be limited to exchange functions.

As the Commission's recent PCS Notice of Proposed Rulemaking recognizes, cellular has developed into far more than a limited local exchange offering confined to the precise boundaries of MSAs and RSAs:

> In creating the cellular telephone service eleven years ago, the Commission decided to license 734 metropolitan and rural service areas. However, the system that exists today has effective operating service areas that are much larger than the initial division would imply.[10]

This development reflects efforts to provide service that transcends geographic boundaries, removes impediments to mobility, and responds directly to marketplace demand.

With these goals in mind, McCaw is implementing its North American Cellular Network ("NACN"). NACN provides subscribers with automatic roaming throughout the country and assures them exactly the same features and dialing patterns in foreign systems that they enjoy in their home system. Cellular subscribers can place and receive calls while they are on the move, no matter where they are located.

At the regional level, the provision of seamless service is accomplished through the integration of systems located in contiguous service areas or states. These integrated systems handle both intrastate and interstate communications, and are frequently marketed under "cluster" plans that make wide-area service available at unitary rates, with no separate long

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[10] Amendment of the Commission's Rules to Establish New Personal Communications Services, FCC 92-333, GEN Docket No. 90-314 and ET Docket No. 92-100, released August 14, 1992, at ¶ 56 ("PCS Notice").

distance charge. McCaw, for example, offers five service clusters in various areas of the country. These clusters, which represent one of the most intense points of competition between cellular licensees, have gained strong acceptance in the marketplace.[11]

McCaw and other cellular carriers also offer "bucket" plans, which integrate local and long distance service to users in particular areas and offer extended -- and even nationwide -- service at fixed rates. Unlike cluster plans, the rates offered under bucket arrangements are not geographically limited. That is, a subscriber to a bucket plan may call anywhere in the country at the same distance-insensitive rate. Given the inherent mobility of cellular subscribers, McCaw believes such distance-insensitive pricing will become increasingly in demand.[12]

In short, cellular has evolved into far more than a traditional local exchange service. Its evolution demonstrates that the very concept of a "local" service is meaningless in the mobile context. Against this background,

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[11] See Affidavit of Professors Higgins and Miller, C.A. No. 82-0192, filed August 4, 1992 (Attachment 4 to the Joint BOC Filing), at ¶ 21: "the importance to cellular customers of seamless coverage across geographic areas broader than, or simply different from, the FCC's rural and metropolitan licensing areas is indicated by the tremendous growth in 'clustering' ...."

[12] As discussed below, equal access would require the artificial disaggregation of these cluster and bucket plans, with corresponding loss of consumer benefits.

the imposition of equal access would be both unprecedented and regressive.

B. There Are Decisive Legal Distinctions Between The Cellular Industry And Traditional Landline Local Exchange Carriers.

As mentioned above, the only previously articulated legal basis for imposing equal access requirements is that the entities subject to those requirements were monopolies controlling a bottleneck. Tellingly, MCI does not advance this argument in support of its Petition. The reason, McCaw submits, is that cellular carriers clearly do not and will not enjoy monopoly bottleneck control of exchange access services.[13]

As an initial matter -- and an obvious point of distinction from the landline local exchange -- there are two cellular licensees in each service area. They are independent entities which compete vigorously in terms of price, service quality, geographic coverage, and availability of ancillary offerings.

For example, Professor Jerry Hausman of MIT recently concluded that:

> [a] high degree of competition between cellular carriers has been observed along two dimensions -- quality and price. ... [W]hen discounts and pricing plans are accounted for, the real (inflation adjusted by CPI)

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[13] See note 5, supra.

> price of cellular usage has decreased about 10-12 percent per year over the past five years.[14]

With respect to service quality, carriers are beginning to incorporate digital technology into their networks, which will provide higher quality, more secure service on a far more spectrum-efficient basis. In addition, cellular licensees have greatly expanded the range of services available, adding such functionalities as voice messaging and traffic reports, in an effort to make cellular more convenient and attractive. In no sense, then, can cellular carriers be classified singularly or jointly as a monopoly controlling a bottleneck.

Moreover, the Commission has just proposed to authorize new personal communications services,[15] motivated in large part by a desire to bring additional competition to the mobile communications marketplace.[16] In addition, SMR service providers, such as Fleet Call, have been given significant new freedoms and now can provide services that

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[14] Affidavit of Dr. Jerry Hausman, C.A. No. 82-0192, filed August 4, 1992 (attachment 3 to "Reply of the Bell Companies in Support of their Motion for Removal of Mobile and Other Wireless services from the Scope of the Interexchange Restriction and Equal Access Requirement of Section II of the Decree" (hereinafter "Joint BOC Reply"), at ¶¶ 23, 24.

[15] PCS Notice, note 10 supra;

[16] Statement of Chairman Alfred C. Sikes before the Senate Communications Subcommittee, June 3, 1992, at 6; Statement of Cheryl A. Tritt before the Senate Communications Subcommittee, July 1, 1992, at 3.

are functionally equivalent to cellular.[17] With the advent of these new services, the mobile communications marketplace will become even more competitive. Consequently, because no bottleneck exists now or will exist in the future, there is no legitimate basis for the dramatic regulatory intervention in the marketplace represented by equal access obligations.

III. CELLULAR EQUAL ACCESS WOULD NOT BENEFIT CONSUMERS.

Notwithstanding the tremendous consumer benefits of the Commission's flexible regulatory approach to the cellular industry, MCI now asks the Commission to impose burdensome equal access requirements on cellular licensees. MCI claims that cellular subscribers are paying "full market rates" for long distance calls placed over their cellular phones and would receive lower rates as the result of equal access. It also states that cellular subscribers are injured because they cannot presubscribe to an IXC.[18] As this section explains, however, MCI's assertion that consumers would experience widespread benefits from cellular equal access is belied by examining how cellular carriers provide service.

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[17] See Request of Fleet Call, 6 FCC Rcd 1533 (1991); Press Release, "FCC Eliminates Separate Licensing of End Users of Specialized Mobile Radio Systems," Report No. DC-2197, released August 5, 1992; Fleet Call, Inc., Petition for Rulemaking, RM-7985, filed april 22, 1992.

[18] MCI Petition at 3, 5.

Today, cellular subscribers may place and receive "long distance" calls using their cellular telephones whether they are in their home system or roaming. Neither McCaw nor, to its knowledge, any other cellular carrier imposes a surcharge on standard MTS rates for this valuable capability. Rather, subscribers pay less than "full market" long distance rates for interexchange cellular calls included within wide-area calling plans, and in almost every other situation, pay no more than basic IXC retail rates.

For instance, if a call is placed to a location that would be considered long distance on the landline network, but is served by an integrated cluster of cellular systems, the cellular carrier generally will transmit the call over facilities that it owns or leases. If the call is within the wide-area calling plan for the cluster, the customer will be charged the local or wide-area per-minute rate for service, rather than being billed separately for air time and toll charges. As the following examples illustrate, the total charge to the customer is often less than if the cellular carrier were forced to bill separately for air time and long distance:[19]

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[19] These examples assume that the cellular user subscribes to a premium plan that, in general, includes 360 minutes of air time and costs between $115 and $140 per month. They also assume AT&T's standard MTS rate of 22 cents per minute for calls within this mileage band.

Example 1: 10 minute daytime call from Pittsburg, PA to Wheeling, WV

Cellular One	$0.00	toll
	4.31	air time
	4.31	
BAMS	$2.20	toll
	3.39	air time
	6.09	

Example 2: 10 minute daytime call from Reno, NV to So. Lake Tahoe, CA

Cellular One	$0.00	toll
	3.89	air time
	3.89	
PacTel Cellular	$2.20	toll
	3.69	air time
	5.89	

Example 3: 10 minute daytime call from Spokane, WA to Coeur d'Alene, ID

Cellular One	$0.00	toll
	3.00	air time
	3.00	
US West	$2.20	toll
	3.83	air time
	6.03	

If the call is placed to a destination outside the wide-area plan, it will generally be handed off to an IXC selected by the cellular carrier. In such cases, the cellular carrier often has an agreement with a particular IXC to obtain bulk service at volume-discounted rates. Most carriers charge the subscriber the IXC's standard retail rates -- but not more -- and use the revenue to support new investments or reduce capital costs. Some carriers share the discount with their cellular subscribers.

Against this background, it is evident that cellular equal access on balance would not lower prices to consumers, but would simply shift revenues from cellular carriers to IXCs.[20] For wide-area calls within system clusters, subscribers would pay more for service than they do today because they would be charged for air time by the cellular carrier and for transmission service by the IXC. For long distance calls outside wide-area plans, subscribers of carriers that share volume discounts also would face higher charges.[21] And subscribers of carriers that pass through standard IXC rates likely would pay the same for long distance service.

Finally, it should be emphasized that equal access would impose significant costs on cellular carriers. Carriers would have to purchase new software, file tariffs,[22] change all of their customer literature and instruction manuals, and inevitably, pursue waivers and declaratory ruling requests to

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[20] Nor is there reason to believe that presubscription would offer appreciable consumer benefits in the cellular context. Subscribers today already can access an alternative IXC by using a calling card or dialing an 800 or 950 number.

[21] In few cases would these subscribers qualify for rates less than what MCI terms "full market," let alone rates that approach the level of the volume discounts available to cellular carriers.

[22] It has been McCaw's experience that state tariffing requirements often impose significant burdens and costs and hamper carriers' ability to respond quickly to marketplace demands.

clarify the scope of the equal access requirement.[23] These costs would need to be reflected either in cellular rates or in charges to IXCs, which would ultimately be passed on to cellular subscribers in any event.

IV. CELLULAR EQUAL ACCESS WOULD IMPEDE THE DEVELOPMENT OF THE CELLULAR INDUSTRY AND RESTRAIN COMPETITION IN THE MOBILE SERVICES MARKETPLACE.

As McCaw detailed in Section II, mobile communications users need seamless, transparent service over as large an area as possible. Cellular equal access would frustrate efforts to meet this need and would impair both the continued evolution of the cellular service and competition in the mobile communications marketplace.

First of all, cellular carriers have invested substantial resources in developing integrated, regional system clusters capable of handling both intrastate and interstate communications. Equal access, however, presumably would require that any interstate, intra-cluster call be handed off to the IXC of the subscriber's choice in the state of origination, whether or not the cellular carrier could complete the call over its own facilities. This would render useless a significant portion of the existing cellular

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[23] Such filings might be necessary, for example, to obtain relief from equal access requirements in some or all RSAs, where the costs of implementation would be disproportionate in light of the negligible amount of interstate long-distance traffic.

infrastructure and undermine the incentive of cellular carriers to continue to improve their systems. In addition, it would relegate cellular to being just another local exchange service, rather than a wireless alternative for end-to-end communications.

Depending on implementation, cellular equal access also would introduce serious inefficiencies into the efforts of McCaw and other cellular carriers to provide true seamless service across the nation. For example, if cellular carriers were required to hand off to IXCs interstate calls that currently are switched by Mobile Telephone Switching Offices ("MTSOs") located across state boundaries, such calls would need to be brought back to the point of origination for interconnection with an IXC.

By way of illustration, calls originating in McCaw's Coeur d'Alene, Idaho market and terminating in the Spokane, Washington market currently are picked up by a cell site in Coeur d'Alene, routed to Spokane for switching, and delivered to a local Spokane point of interconnection. If equal access required McCaw to hand off the call to an IXC in Coeur d'Alene, the call would have to be routed back there -- after having been switched in Spokane -- to a point of interconnection with the customer's designated IXC and then routed on the IXC's network back to Spokane.

Finally, placing incongruent burdens on cellular carriers would hamper them from competing to meet the end-to-

end communications needs of mobile users. There is no indication in MCI's Petition or the Commission's actions and proposals that competing providers of wireless services, including ESMR systems and PCS carriers, will be subject to equal access requirements. Saddling cellular carriers with unique equal access obligation would seriously diminish the flexibility and competitiveness of the entire mobile communications marketplace, to the detriment of consumers and of the wireless industry.

V. CONCLUSION

For the past eleven years, the Commission has given cellular carriers the flexibility to design their networks and integrate their services to meet the unique needs of mobile users. Cellular carriers have used this flexibility to develop efficient and seamless regional and nationwide systems. As a result, consumers have benefitted from declining prices and transparent, wide-area service offerings.

MCI now seeks to burden this competitive and still developing industry with intrusive, unprecedented, and unwarranted equal access requirements. Such requirements would improperly ignore fundamental factual and legal distinctions between cellular service and traditional landline local exchange service. Moreover, equal access would result in no tangible benefit to consumers, but would

simply shift revenues from cellular carriers to IXCs. Finally, equal access would hinder the development of the cellular industry and impede competition in the mobile communications marketplace.

For all of these reasons, MCI's Petition should be dismissed.

Respectfully submitted,

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September 2, 1992

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September, 1992, I caused copies of the foregoing "Opposition" to be mailed via first-class postage prepaid mail to the following:

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